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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,667	09/16/2005	Minoru Kuroda	5404/96	2297
757	7590	12/03/2008	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			JUSKA, CHERYL ANN	
ART UNIT	PAPER NUMBER			
1794				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/521,667	KURODA ET AL.
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 18 August 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments, see page 2, 3<sup>rd</sup> paragraph, filed August 18, 2008, with respect to the rejections of claims 1-8 based upon the Maekawa reference (JP 10-137103) have been fully considered and are persuasive. Specifically, applicant notes that Mackawa fails to teach the short pile or down hair has a flat cross-sectional shape. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground of rejection is made in view of JP 11-350298 A issued to Saito et al.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 5 is indefinite because it is unclear how the short pile fiber is a "shrinkable" fiber. According to the specification, the short pile is formed by shrinking said shrinkable fiber. Hence, it is unclear if applicant intends to claim the final product having a short pile or the intermediate product comprised of shrinkable fibers capable of being shrunk to form said short pile portion.

***Claim Rejections - 35 USC § 102/103***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 11-350298 A issued to Saito et al.

Saito discloses a plush (pile) fabric composed of acrylic fiber (abstract). The fabric is produced by blending (a) 20-40 wt.% of a flat acrylic fiber having a flatness ratio of 5 – 20, (b) 20-40 wt.% of a non-shrinkable acrylic fiber having a flatness ratio of 1 – 1.5, and (c) 20-60 wt.% of a shrinkable acrylic fiber having a flatness ratio of 1.8 – 5 (abstract). The flat fiber (a) have a fineness of 5-20 denier, the non-shrinkable fiber (b) has a fineness of 3-7 denier, and the shrinkable fiber (c) has a fineness of 2-6 denier (abstract). The acrylic fibers comprise a copolymer of at least 80% acrylonitrile and up to 20% of a copolymer (section [0006]). The shrinkable acrylic fibers, which have a shrinkage rate of 20-40%, form the downy hair or short pile portion of the pile fabric (abstract and section [0009]).

With respect to applicant's claimed fiber fineness relationship, the fiber deniers disclosed by Saito for the short pile are descriptive of the fibers prior to shrinking. Since the fiber fineness

will inherently increase after shrinking, the Saito reference fails to explicitly teach final fiber fineness for the short pile fibers. Hence, it is reasonable to presume that after shrinking of the shrinkable fibers, the fineness of the short pile fibers will inherently meet applicant's claimed fiber fineness relationship. The burden is upon applicant to prove otherwise. Additionally, note that in three working examples, the ratio of the fineness of fiber (b) (i.e., long pile) to the fineness of fiber (c) (i.e., short pile), *prior to shrinking*, is greater than 0.1 and less than 1 (see Table 1, Example 12 and Table 2, Examples 6 and 8). Specifically, said ratios are 5/6, 5/7, and 2/3, respectively.

Thus, Saito teaches the presently claimed invention with the exception of the claimed pile length differential (i.e., 1-5 mm). However, it is reasonable to presume that said pile differential is inherent to the invention. Support for said presumption is found in the use of similar materials (i.e., low shrinkage fibers forming the long pile portion and high shrinkage fibers forming the short pile portion) and in the similar production steps (i.e., blending the fibers into a yarn, forming a pile fabric, and subjecting to shrinking) used to produce the pile fabric. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed pile length differential would obviously have been provided by the process disclosed by Saito. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 1-5 and 8 are rejected as being anticipated by or obvious over the cited Saito reference.

***Claim Rejections - 35 USC § 103***

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Saito reference.

With respect to claim 7, the reference fails to explicitly teach an average pile length for the long pile of 12-25 mm. However, it would have been obvious to one skilled in the art to employ a pile length within the range claimed since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Note the length of pile in a synthetic fur fabric such as that disclosed by Saito is limited by the natural pile length which is being simulated. Additionally, one skilled in the art readily understands that said length will directly affect the pile hand and appearance. Therefore, claim 7 is also rejected.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Saito reference as applied to claims 1 or 2 above, and further in view of US 5,976,693 issued to Miyoshi et al.

While Saito fails to teach the use of an organopolysiloxane on the surface of the fibers of the long pile portion, said use is well known in the art. Specifically, organopolysiloxanes are well known in the art as a finishing treatment for acrylic pile fabric, wherein said treatment smoothes the fibers and enhances the animal-like hand thereof. See Miyoshi, col. 1, lines 22-23. Hence, claim 6 is also rejected over the cited prior art since the use of an organopolysiloxane would have yielded predictable results to one skilled in the art.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/  
Primary Examiner  
Art Unit 1794*